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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,934	07/16/2003	Jeffrey C. Andle	0319US-Biode	8884
23521	7590	05/31/2005	EXAMINER	
SALTAMAR INNOVATIONS			BUDD, MARK OSBORNE	
30 FERN LANE			ART UNIT	
SOUTH PORTLAND, ME 04106			PAPER NUMBER	

2834

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/620,934	Applicant(s) ANDLE, JEFFREY C.	
	Examiner Mark Budd	Art Unit 2834	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-24, 26, 29-32 and 35-41 is/are rejected.
- 7) ☒ Claim(s) 13, 25, 27, 28, 33, 34 and 42-51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1, 5, 9, 12 and 17 are rejected under 35 USC 102 as being anticipated by Bulst for the reasons noted in the previous office action (12-3-04).

Claims 2-4, 6-8, 10, 11 and 14-16 are rejected under 35 USC 103 as unpatentable over Bulst for the specific reasons set forth in the previous office action (12-3-04).

Claims 18-24, 26, 29-32 and 35-41 are rejected under 35 USC 103 as unpatentable over Baer in view of Bulst for the same reasons noted in the previous office action (12-3-04).

It may be helpful to applicant to know that the examiner is interpreting the claim language to read on applicants figs. 1 and 2 as follows. A substrate of piezo material (black area #105 fig. 1), electromechanically significant reflective grating (all area between #230 and #240, including 3200, 210 and 220). Electro-mechanically active transducer elements (#200, 210, 230, 240) (not 220). This is in accord with the specification and applicants comments in order for the active area to be covered on at least 60% of its longitudinal dimension by "electromechanically active transducer elements". Looking at the Bulst structure in the same light, it is clear that Bulst, structurally shows the same structures as those claimed by applicant; 60% of the active area (#300, #70, #53, #100, #54, #200, #60) contains electromechanically active transducer elements. Note that the wherein said reflective grating is constructed ---"is merely a functional statement that does not define any specific structure for achieving the function. As such it has not been given patentable consideration. Courts have found that claims directed to apparatus must be distinguished from the prior art in terms of

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structure rather than function. In re Danly, 263 F. 2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). Apparatus claims cover what a device is, not what a device does Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469, 15 USPQ 2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original).


Claims 13, 25, 27, 28, 33, 34 and 42-51 remain objected to.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Budd/ds

05/19/05


MARK D. BUDD
PRIMARY EXAMINER
ART UNIT 2834